

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, :
: :
Plaintiff, : :
: :
v. : : Criminal Action No. 07-48-GMS
: :
TYRONE ROANE, : :
: :
Defendant. : :

DEFENDANT'S MOTION IN LIMINE

Defendant, Tyrone Roane, by and through his undersigned counsel, Edson A. Bostic, Federal Public Defender for the District of Delaware, hereby moves this Court, pursuant to Fed.R.Crim.P. 14, for an Order bifurcating the proceedings and severing Counts Two and Three of the Indictment, which charge Mr. Roane with being a felon in possession, from Count I of the Indictment, which charges him with the intent to distribute more than five grams of crack cocaine.

As grounds for this motion, Mr. Roane submits as follows:

1. Mr. Roane is charged in a three-count Indictment with possession with intent to distribute more than five grams of crack cocaine base ("crack"), a controlled substance, in violation of 21 U.S.C. § 841 (a)(1) and (b)(1)(B) (Count One); possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c)(1)(A) (Count Two); and possessing a firearm in and affecting interstate commerce, to wit, a Ruger, model MKII, .22-caliber pistol, serial number 214-92208, all in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (Count Three).
2. Mr. Roane's trial is scheduled to begin on November 19, 2007.
3. Mr. Roane respectfully requests that the Court: (1) bifurcate the proceedings and sever

Counts Two and Three of the Indictment from Count I of the Indictment; and (2) allow the jury to deliberate and to return a verdict on Count One before hearing evidence as to his prior conviction status and deliberating on the remaining Counts. The defense is prepared to stipulate that Mr. Roane has a prior felony conviction.

4. Rule 14 of the Federal Rules of Criminal Procedure states, in pertinent part, that “[if] the joinder of offenses or defendants in an indictment . . . appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants’ trials or provide any other relief that justice requires.” Id. Mr. Roane submits that evidence of his prior felony conviction would prejudice the jury in deciding Count One of the Indictment.

5. In United States v. Joshua, 976 F.2d 844 (3d Cir. 1992) (*abrogated on other grounds by Stinson v. United States*, 508 U.S. 36 (1993)) the Third Circuit approved of bifurcation as a trial strategy that “strikes the appropriate balance between concern about prejudice to the defendant and considerations of judicial economy.” Id. at 847, n.5. Other courts have followed the Third Circuit’s endorsement of the bifurcation of proceedings. See e.g., United States v. Plummer, No. 2:05-cr-336, 2007 WL 2973712 (W.D. Pa. 2007) (granting motion to sever counts and ordering three separate trials); United States v. Barnes, No. CRIM. 05-CR-134, 2005 WL 2994698 (E.D. Pa. Aug. 8, 2005) (granting the defendant’s motion to bifurcate the possession of a firearm by a felon charge from the other charges). See also, United States v. Dockery, 955 F.2d 50, 53 (D.C. Cir. 1992) (“The exclusion of other crimes evidence is not simply a ‘technicality’ designed to prevent law enforcement personnel from doing their job; it reflects and gives meaning to the central precept of our system of criminal justice, the presumption of innocence.”).

6. Here, Mr. Roane’s felon status would prejudice the jury in deciding Count One of the

Indictment. To avoid that undue prejudice, the jury should consider Count One separately from Counts Two and Three. Neither the jury nor the Court would be unduly inconvenienced if the charges are severed because the defense will stipulate to Mr. Roane's prior felony status, and the jury would still be required to determine if Mr. Roane possessed a firearm in furtherance of a drug trafficking crime.

WHEREFORE, for the foregoing reasons, Mr. Roane respectfully requests that the Court issue an Order bifurcating the proceedings and severing Counts Two and Three of the Indictment, from Count One of the Indictment.

Respectfully submitted,

/s/ Edson A. Bostic
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Dated: October 23, 2007

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:

ORDER

Having considered Defendant's Motion in Limine,

IT IS HEREBY ORDERED this _____ day of _____, 2007, that the charge of Felon in Possession of a Firearm, representing Count Three of the Indictment, be bifurcated for trial from the charges of Possession with Intent to Distribute Five or More Grams of Cocaine Base and Possession of a Firearm During a Drug Trafficking Crime, representing Counts One and Two of the Indictment; and the jury will deliberate on Counts One and Two prior to hearing evidence of the defendant's prior conviction.

HONORABLE GREGORY M. SLEET
Chief Judge, United States District Court